# Town of Clarence Planning Board Minutes

Wednesday, November 22, 2006

## Work Session (6:30 PM)

Roll Call
 Minutes
 Sign review
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 Agenda Items

## Agenda Items (7:30 PM)

#### Item 1

Ed Nesselbeck/Metzger Civil Engineering Requests Preliminary Concept Review for a Proposed subdivision at 6237 Heise Road.

Item 2

Epiphany Church Requests Preliminary Concept Review for the Agricultural Rural-Residential/Industrial construction of a new church and church campus

at 9520 Wehrle Drive.

Item 3

Benderson Development Requests Preliminary Concept Review for a proposed drug store/office building at 9217 Main

Street.

Patricia Powers, Chairperson, called the meeting to order at 7:30 p.m. Councilman Scott Bylewski led the pledge to the flag.

Planning Board Members Present:

Patricia Powers Wendy Salvati Jeffrey Grenzebach Gerald Drinkard

Planning Board Members Absent:

George Van Nest Richard Bigler

Timothy Pazda

Other Town Officials Present:

Councilman Scott Bylewski James Callahan, Director of Community Development David Donohue, Deputy Town Attorney

## Other Interested Parties Present:

Harold Scheg
Paul Regan
Jim Sendker
Sandy Hutchinson
Dennis Zuchlewski
Fred Back

Greg Milbrandt

Ruth Scheg Marjory Regan Len Satola David Hutchinson John Hallhan Carolyn Back

#### Item 1

Ed Nesselbeck/Metzger Civil Engineering Residential Single-Family

Requests Preliminary Concept Review for a proposed subdivision at 6237 Heise Road.

## **DISCUSSION:**

Jim Callahan provides the history on the project. The property is located on the east side of Heise Road north of Clarence Center Road. It consists of approximately 14.4 acres and is zoned Residential Single-Family. The applicant is proposing to subdivide the property into residential building lots. The Town Board has referred the request to the Planning Board to consider an Open Space Design (OSD) Development. This represents the introduction of the project to the Planning Board and the community.

Michael Metzger, of Metzger Civil Engineering, is representing the applicant. Mr. Metzger explains the plan which shows twelve (12) single family home lots. He also explains that both this design and the OSD design were sent to the Planning Board. There was a similar plan submitted in July of 2003 which was referred to the Planning Board. The Planning Board suggested the applicant work with the DEC to find out what the requirements were. The project has not been back before a Board since that time. This current plan is in consistent with the Master Plan and compliant with the Zoning Code and Subdivision regulations. Mr. Metzger provides history on this project by reading a letter written by Mr. Nesselbeck. In 1983 Edward R. and Gerald Nesselbeck purchased 16.7 acres at 6237 Heise Road. New construction for a principle residence for the owners began and was completed in 1990. Since then the parcel has been segregated off, that's why the current proposal shows 14.4 acres. In April 1995 Edward Nesselbeck met with Paul McCarthy, of the Planning and Zoning Department of Clarence NY, in Mr. McCarthy's office. Mr. Nesselbeck expressed his desire to go on record as having an interest in developing the property for residential lots behind his principle residence. He was aware of future development of the property known as Pine Breeze Part IV and Beech Meadows Part III adjacent his east and north property lines respectively. Mr. Nesselbeck requested access to his property via the new development. Mr. McCarthy agreed that access through the Pine Breeze and Beech Meadow developments would be appropriate, he felt that attempting new road construction from Heise Road, which would require a bridge over Ransom Creek, would likely be cost prohibitive if even allowed by the DEC. He assured Mr. Nesselbeck that the Town would never land-lock an owner's property. Mr. McCarthy suggested that a letter be written to the Town Board expressing the interest in access to the Nesselbeck property via the adjacent development, the letter was sent. In July 1996 Mr. Nesselbeck noted construction activities adjacent to his north property boundary line and he immediately contacted Jim Callahan, Director of Community Development for the Town of Clarence. Mr. McCarthy was no longer in Planning and Zoning as he had been elected to Town Supervisor. On July 30, 1996 Mr. Nesselbeck sent written notes to Paul McCarthy and John

Love. At the time Mr. Love was a councilman and had earlier expressed his support for Nesselbeck's Heise Road development. Nesselbeck also wrote to Mr. McCready of the Planning Board. Mr. Callahan responded in writing with a letter to Nesselbeck dated August 1, 1996 stating that the Planning Board did not receive the letter of April 7, 1995 and it was too late for gaining access to the property from Beech Meadows. Mr. Nesselbeck responded to Mr. Callahan in writing. On August 8, 1996 Nesselbeck received a call from John Love regarding the request for his development plans. Love explained how he relayed to the Planning Board that the Town Board did, in fact, receive Nesselbeck's letter of April 1995 before the Beech Meadow or Pine Breeze details were completed. On August 9, 1996 Nesselbeck received a call from Town Supervisor, Paul McCarthy, regarding the request for the development plans and explained that he told Mr. Callahan and Mr. McCready that he was very upset and the letter of April 1995 was accurate. On November 1, 1996 Nesselbeck received a call from Mr. Callahan stating that the civil engineers representing the applicants for Pine Breeze and Beech Meadows will consider incorporating a stub to the Nesselbeck property through the future development known as Pine Breeze Part IV, which is adjacent to the east property line of the Nesselbeck property. Nesselbeck responded in writing. At the December 4, 1996 Planning Board meeting engineers for the Pine Breeze Part IV development stated that it was not practical to access the Nesselbeck property through the Pine Breeze due to elevation and capacity concerns regarding the sanitary sewer tie in. The Planning Board then moved to approve the Pine Breeze plans without consideration for providing a road connection to Nesselbeck's property. As a last and possibly a cost prohibitive attempt Nesselbeck contacted with Metzger Civil Engineering to plan a development of the property with access and utilities from Heise Road. Connection to the surrounding sanitary sewers at that time were not available and any development at the property would need to include what is needed for individual septic systems. Through recent business arrangements there will now be sewer capacity for this project.

Mr. Metzger goes on to explain that the existing house would be to the right as you come into the development and to the left would be the wooded area. The road would cross the creek and expand into the cul-de-sac. The smallest of the lots is 30,000 sq. ft.; the largest may be over 2 acres.

Mr. Metzger explains that the property is dissected by two (2) districts. Part of the property is in Clarence Sewer District #6 and part of it is in District #2. The sewers, physically, would run by gravity and come out along the road to Heise Road and then travel down Heise Road and tap into the Peanut Line.

Patricia Powers asked if this project requires permission from the Army Corp of Engineers to put the bridge across the creek. Mr. Metzger said there is the need for permits to be issued by the Army Corp of Engineers as well as the NYSDEC, they have had discussions with both agencies and are prepared to meet the requirements. The wetlands have not yet been delineated.

Mr. Metzger said the proposal is for a public road. Gerald Drinkard asks what the advantage would be to the Town if a public road was approved. Mr. Metzger explains that the public road would open up an opportunity for twelve (12) more people to become residents of the Town and generate a significant amount of tax base.

Mr. Metzger understands that the SEQRA procedure would have to be re-opened.

The Nesselbeck's have sold the home at the site and no longer reside there.

Gerald Drinkard said the conventional plan is his preference. He points out that with the deep lots it may be that each individual owner might decide to cut down all the trees on his perspective lot. To avoid this he suggests shortening the size of the lots, perhaps put in a conservation easement on every property. Mr. Metzger explains that there is over 4 acres of preservation with this plan and they would be willing to provide a conservation easement along the back of the lots which would be about 3 acres.

Wendy Salvati voiced her concern regarding the preservation of continuous open space and not chunks of open space because you cut down the resource value when you start to fragment, so keeping the required 125' width, the lots really don't need to be any more than 160' deep. She also commented that even on the individual lots the Board would like to see the trees preserved.

Gerald Drinkard asked if a deed restriction on each lot could be applied so that you could not cut trees so much back. Mr. Metzger confirmed there would be a deed restriction on each individual lot and continued (referring to a diagram) an open space of 50' to 100' and beyond in depth to the north and south, depending on how the house is situated on the lot creates another open space buffer. Gerry Drinkard commented that the lots could be even shorter in depth. Mr. Metzger responded there is a need to balance between land preservation and land use. He added they have 22 lots in the open space calculations which have not yet been approved by the Zoning Department.

Pat Power's inquired regarding soil testing. Mr. Metzger replied they plan to do it. Gerry Drinkard pointed out they could be more aggressive with their green space plan.

Carolyn Back of 6230 Emily Court questioned the Town's previous decision of responsibility of the bridge being private and what happened to the wildlife study. She said she is requesting a 200' buffer zone and not 50'. She then asked why the property is for sale and stated that they have had a lot of flooding problems and is concerned with drainage.

Sandy Hutchinson of Jennifer Court voiced her concerns are the same as the previous homeowner.

Phil Poleso of Emily Court emphasized the previous homeowners concerns and the fact that the land is for sale. Also, the proposed road which is going to come off of Heise Road where there is a considerable dip in the road, north-south traffic will be unable to see people turning onto the road going into the subdivision, which creates a safety concern. He has observed flooding across the road and is concerned that disturbing the creek walls it will emphasize the flooding. Phil Poleso provided the Board with photographs of the flooding.

Dennis Mclusky of Jennifer Court stated his concern of drainage. He pointed out that when Balsa Fir was built he had many discussions with Mr.Latona with how the street was developed with a pitch towards Jennifer Court. He inquired what the plan will be, build it up or perimeter drainage? He remarked the whole property is pitched toward the creek and if they build homes and backyards are pitched onto the courts the problem will be worse than what currently exists. Mr. Latona was well aware. Mr. Mclusky mentioned if sewers are not allowed and the septic systems are put in rear yards he would hate to see the run off flow back to the cul-de-sacs.

Fred Bach of Heise Road, north of this development is concerned is how they are going to control the storm water run off and how they are going to retain all the water running off those lots.

Photos were submitted to Jim Callahan.

Mike Metzger addressed the buffer zone issue noting that because of the side lot lengths are 260' and upwards, a 200' buffer is prohibited because you could not put a house on it. They will work on the buffer. Referring to the land for sale, Nesselbeck is keeping options open and wants to move the project forward but if someone with the right price, he will sell. He said the creek walls are distinct, however it is a flood plain and has floodways associated with it. They would be working with the Town Engineer, who is very knowledgeable. One thing they would do is a HEC 2 analysis to ensure they would not be creating any problems. Mike Metzger acknowledged the on site drainage issue stating the property does drain towards the creek and referred to the blue diamond on the plan discussed a storm water detention pond. He stated the restrictions for detaining the 100 year storm have become more stringent, so in addition to detain the 100 year storm they cannot make the 100 year flood plain any worse. He cited the rear yard drainage concern, reiterating the land does drain towards the creek and with the build up of the building lots enhances the drainage. To compensate there will be a rear yard drainage system that will collect the water coming off the lots, carry it through the storm sewers and running in the detention pond. The only way that water will be leaving the site is through the storm water detention pond and into the creek, after it is properly detained. Mike Metzger stated there is no plan for this project to move forward on septic systems, it is proposed on sanitary sewers and if something changed, it would come to a screeching halt and then would be reviewed by the Town. They are working with the DEC and have been in touch with their wildlife biologists who have a clear direction, asked them to make sure there is clear passage way for wildlife to go underneath the bridge. Complying, they will probably use a corrugated metal pipe arch with no bottom on it with a natural bottom so that wildlife could go from one side of the road to the other in a natural area. He brought up the site distances 3 years ago which would be adequate to comply with requirements for access onto Heise Road.

Gerry Drinkard asked if there was a site elevation, showing the pitch of the land. Mike Metzger replied they have not had a topographic survey done yet, but have looked at the USGA quad maps and they might have the Town's topographic map which shows it drains into the creek. Gerry Drinkard asked who they talked to about putting a bridge over Ransom Creek. Mike Metzger replied they have met with Steve Doleski with the DEC who has some say in rendering the specifications for the bridge and the wildlife, but the details will be worked out with the Town Engineer. Gerry Drinkard stated the creek often dams up down creek and when it dams up it causes damage where these people live explaining the creek goes from dry to way over it's banks other times of the year. He noted that if the bridge caused a damming effect will exacerbate the situation, so the specifications of the height and width of the bridge should be regarded with cautiousness. Mike Metzger cited the HEC 2 analysis will determine what size opening will be needed to make sure the flood waters are being tamed through there necessitating the need for a substantial bridge.

Jeff Grenzebach questioned the sewers infrastructure down to the Peanut Line. Mike Metzger remarked it is about 550' from the creek out to the road, then another 850' down to the Peanut Line.

## **ACTION:**

Motion by Jeff Grenzebach, seconded by Wendy Salvati to **table** agenda item #1 with respect to 5 items:

1. More information is needed regarding the sewer connection to either Heise-Brookhaven or the Peanut Line; either will require reopening SEQR.

- **2.** Wetland delineation.
- **3.** Tree survey.
- **4.** HEC 2 analysis.
- **5.** Soil analysis.

# ON THE QUESTION:

Mike Metzger asked for clarification on the 5 items. Wendy Salvati referred to the soil testing, specifying the large quantity of hydric soils at the site. The Board requires the soil analysis and she is concerned with the need to reopen SEQR.

The tree survey may be different since the October 2006 storm, Mr. Metzger said the applicant may just concede and say there is a 100% canopy, at this point what purpose would a tree survey provide. Gerald Drinkard explains the Landscape Law which says any tree 6" (and larger) in diameter must be preserved, if not, it must be replaced at a 2:1 ratio.

Jim Callahan clarifies that for purposes of calculating density yield on an Open Space Design, this is 100% mature woodland, so there is probably no need for a tree survey.

Mr. Metzger said the floodway was taken out when the density was calculated.

Patricia Powers	Aye	Wendy Salvati	Aye
Jeffrey Grenzebach	Aye	Gerald Drinkard	Aye

## MOTION CARRIED.

## Item 2

Epiphany Church Agricultural Rural-Residential/Industrial Requests Preliminary Concept Review for the construction of a new church and church campus at 9520 Wehrle Drive.

## **DISCUSSION:**

Jim Callahan provides the history on the project. The property is located on the north side of Wehrle Drive, just west of Gunnville Road, consists of 14.2 acres and is zoned Agricultural Rural Residential along the Wehrle Drive frontage, it is zoned Industrial Business Park to the rear of the property. The project was introduced to the Town Board and referred to the Planning Board; this represents the introduction to the Planning Board and the community.

David Hess is the president of the United Church of Christ, Reverend Cushing is the Pastor, they are both present. Mr. Hess explains that they are a mission-based church, pro-active in the community, from the City of Buffalo. The church has been located at 2205 Genesee Street for over 100 years. They are proposing this location because this is were the church's people are; there is a significant core group of young people that live in this area, much of the congregation has moved to the suburbs. They are in the process of finalizing the purchase of the land. The Environmental Impact Study (EIS) has been completed and the results are favorable. The plan that is being proposed is a five (5) to seven (7) year plan. The proposal is for a one (1) story, 150' x 60' steel frame structure that will house the congregation on Sundays. They are hoping for a community based organization to use the structure during the week, they will perform a study to see what the areas needs are. Part of the

building will be the sanctuary; it will be approximately 60' x 80'. There a 170 families in the congregation. The proposal shows storage space, this is for an organ and stained glass windows that will be stored until the new structure is built. There is a second building that would be joined with the first one by an overhang and concrete sidewalk. The second building will be for Sunday school classrooms and meeting areas. For the first couple of years there will be a stone parking lot. During Phase II the plan is to connect the Sunday school building with two other buildings. The large trees shown on the plan will remain. Some of the woods may need to be opened up for the septic system. In the future Mr. Hess explains they would like to open up 150'-200' of the woods and put a baseball diamond or soccer field in as part of the campus. They would like to enhance the woods, perhaps a nature trail or an outdoor chapel. They've also talked about a small clearing back in the woods for the Boy Scouts, if they wanted to have an overnight camp out. The building facades will all be the same.

Mr. Hess has some preliminary drawings of what the building would look like. David Donohue said it is premature to get into the building phase since the applicant is before the Board this evening for Concept Approval.

Mr. Hess said there is an existing path on the property and they have thought of incorporating that path into their plan. There are many trees down from the October 2006 storm.

The frontage on Wehrle Drive is 280', then comes back 271' making the width at that point 402', the property is 1,625' deep. There is a landlocked piece of land near the property and the church would like to make that part of their land.

Patricia Powers explains that Building A is under 10,000 sq. ft. so there is no need for a Special Exception Use Permit (SEUP). Once the other building is proposed the Planning Board needs to review it and make a recommendation to the Town Board.

Gerald Drinkard asks if the parking lot will be blacktop. Mr. Hess said eventually the parking lot will be blacktop, however, he does not know what the requirement is for how soon the parking lot needs to be blacktop, depending on the time frame this will determine the size and amenities of the building.

Mr. Hess said all of the buildings will be one (1) story.

Wendy Salvati explains that by using a stone based driveway the requirements for stormwater detention and drainage will be reduced. Mr. Hess said whatever the regulations are they will follow them.

Patricia Powers asks how far back from Wehrle Drive is the southern most wall of Building A. Mr. Hess said it is approximately 150'.

Gerald Drinkard asks for confirmation that this process is for Phase I only, Mr. Hess confirms.

Marjory Regan, of 9525 Wehrle Drive, said she does not have a problem with a church being built. She is concerned with the entrance way and the increased amount of traffic that will be generated. Marjory Regan also said she would be opposed to any residential housing activity. She points out that the project site is one of the few Blue Heron rookeries in the area. Paul Regan, of 9525 Wehrle Drive, also voices his concern with the traffic, it is not good now and building a church will not improve it. Wehrle Drive has seen much development in the recent past and tremendous taxes are

being paid by everyone. A church would be exempt from taxes. Mr. Regan wonders what the word "campus" means and asks for a clear definition. He explains that he is Reverend Paul Regan and is not arbitrarily opposed to any house of the Lord but this is not the location for it.

Harold Scheg, of 9515 Wehrle Drive, asks what the size of the Residential area is. Mr. Callahan said it is approximately 350'. Mr. Scheg asks what this project will do to the value of the surrounding properties. He voices his concern with the increased traffic that a church will generate and said a church does not belong on Wehrle Drive. Mr. Scheg requests a list of the residents who were notified of this project. The list is on file and the Planning and Zoning Office will mail a copy of the list to Mr. Scheg. He also requests a list of the Planning Board members, a list will be mailed to him.

Councilman Bylewski refers to section 229-122 of the Town Code and suggests the Planning Board review this section as it has to do with the usage of churches.

James Sendker, of 9530 Wehrle Drive, asks what the definition is for "church". He does not think this proposal is for a church. In his opinion a church is a place of sanctuary once a week, maybe one night a week. This proposal looks like a seven day a week operation. He is concerned with the traffic and the sewage. Mr. Sendker said you can call it a church and not pay taxes and if there are other things down the road you can't take the "church" status away from them. He also wonders why the applicant chose this location when there are many other locations for this project.

Councilman Bylewski said the SEUP deals specifically with churches, civic uses, community facilities and nursing homes. In granting an SEUP the conditions are very specific as to what is permitted.

Jim Callahan said he has asked the Pastor to provide a copy of a charter or IRS designation for the tax exempt status of the church.

Alan Herrscher, of 4080 Gunnville Road, agrees with the concern regarding the traffic flow. He would like to see what size water lines would be used to protect a structure of this size. He said he is also concerned with the drainage. Patricia Powers explains that any project received by the Planning Board is eventually referred to the Fire Advisory and Traffic Safety Boards to be reviewed. As far as the drainage issue, this project is not allowed to displace any water from their property off the property; they will have to have an engineer approved drainage system. Mr. Herrscher goes on to voice his concern with the detention pond being built in rock and the possibility of a West Nile Virus outbreak; he's afraid this will be a breeding ground for mosquitoes. If a pond is put in, there is the possibility of drowning, especially with the young children in the neighborhood.

Patricia Powers explains the procedure and steps this project needs to go through.

Dennis Sendker, of 9550 Wehrle Drive, thinks this project is too big for the neighborhood. He voices his concern with the septic system and it being on rock. He is also concern with the increased traffic the church will generate.

Mr. Hess explains that no one associated with this project has called it a campus, it is a church. This is an old Evangelical Church, with a predominantly German heritage. Most of the congregation lives in this area, not in the city. As a church, the building is not just used on Sundays; the building is used for community activities that take place during the week. There is no intention of ever becoming

the size of the Wesleyan Church or the Nativity Church. He is aware of the traffic concern and will do anything he can to assume a friendly role in the neighborhood. With regards to the septic system, the plan is to build it large enough to handle all the buildings for all the phases up front. The average attendance at a Sunday Service is approximately 120 people. Mr. Hess explains that the size of the building is a result of not wanting to take more woods away from the site. This is 100% church.

Patricia Powers suggests tabling the project and explains that a site plan is required, as well as a formal submittal.

## **ACTION:**

Motion by Jeff Grenzebach, seconded by Wendy Salvati to **table** agenda item #2 to allow the applicant time to make a formal submittal which is to include a site plan.

Patricia Powers	Aye	Wendy Salvati	Aye
Jeffrey Grenzebach	Aye	Gerald Drinkard	Aye

#### MOTION CARRIED.

## Item 3

Benderson Development Commercial Requests Preliminary Concept Review for a proposed drug store/office building at 9217 Main Street.

## **DISCUSSION:**

Jim Callahan provides the history on the project. The property is located on the south side of Main Street at the Sheridan Drive Thompson Road intersection. It consists of approximately 13 acres and is zoned Commercial. A variance has been granted by the Zoning Board of Appeals (ZBA) to allow a reduced front yard setback for parking. The applicant has submitted a revised Concept Plan based upon ZBA action and Planning Board comments.

Jim Rumsey, architect for Benderson Development, is representing the applicant. Mr. Rumsey explains that the plan went from a 27 car front parking lot to a 15 or 16 car parking lot in the front. The plan shows a 45' buffer area between the proposal and the residential property adjacent to the site. The buffer area will be landscaped; there are trees on the proposal that are shown to remain. They are proposing a right in, right out driveway on Main Street. Mr. Rumsey said a completed traffic study will be submitted with the Environmental Assessment. The layout for the building has been revised to be parallel with east and west property lines; this decreased the size of the office building from 10,000 sq. ft. to 8,000 sq. ft. At this point, the plan meets the parking requirement. The interior landscape area is 9.2%, 8% is required. The overall landscaping is approaching 50%. The applicant will work to have shared access with the adjacent property owners. The applicant is in the process of doing the photo metric lighting plan; it will utilize shielding, low source lighting and dark sky fixtures. The lighting plan will be submitted with the Environmental Assessment. The architecture will consist of stone and limestone for both buildings.

Patricia Powers likes the windows on the proposal, however, does not like the awnings. Wendy Salvati suggests keeping the windows clear of paper signs. Mr. Rumsey explains that there is a letter in the file that explains the reason for the metal canopy is for its durability and ease of maintenance.

Jeff Grenzebach asks if there was further discussion regarding the store being open 24 hours. Mr. Rumsey said there was no further discussion, but he will ask.

Wendy Salvati said too much signage is an issue. She also voices her concern on the second driveway and she'd like to see a "right in" only, if it has to be there. She doesn't think the "right out" is needed.

Jeff Grenzebach said if this is a 24 hour store when deliveries will be scheduled.

Gerald Drinkard notes that the Landscape Review Committee approval is required.

Patricia Powers suggests a walkway connecting the people living in the mobile home park to the proposed pharmacy. Mr. Rumsey will look into this suggestion.

Mr. Rumsey confirms there will be no medical offices in the proposed building.

Patricia Powers suggests security lights **only** to be lit in the office building at night. Mr. Rumsey agrees and said he'll make sure no lights shine onto the neighbor's property.

Mr. Rumsey said the office building will not be quite as high as the pharmacy building. The high point on the proposed Walgreen's is 35', then steps down to 25' and 28'. The maximum height of the office building would be 25'. Both buildings are single story. Both buildings will be served by one septic system.

Len Satola, owner of the Woodside Village, said he would like a berm put between his property and the proposed Walgreen's. This will shield the residents from traffic noise and car headlights. He would like to see Pine trees in the berm. Mr. Rumsey said he will do whatever he can do to incorporate some heavy landscaping in the berm. He has to accommodate drainage along this area as well.

## **ACTION:**

Motion by Gerald Drinkard, seconded by Jeff Grenzebach, to **refer** agenda item #3 to the TEQR Committee, the Fire Advisory Board and the Traffic Safety Advisory.

Patricia Powers	Aye	Wendy Salvati	Aye
Jeffrey Grenzebach	Aye	Gerald Drinkard	Aye

MOTION CARRIED.

Meeting adjourned at 9:45 p.m.

Patricia Powers, Chairperson